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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

JULIAN J.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent,

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Real Party in Interest.

F050616

(Super. Ct. No. JD108062-00)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Robert J. Anspach,  
Judge.

Rory E. McKnight, for Petitioner.

No appearance for Respondent.

B. C. Barmann, Sr., County Counsel, and Susan M. Gill, Deputy County Counsel,  
for Real Party in Interest.

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\* Before Vartabedian, Acting P.J., Harris, J., and Cornell, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 38-38.1) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing<sup>1</sup> as to his infant daughter E. We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

In early August 2005, sheriff's deputies responded to a motel room where petitioner, a registered drug offender, was reportedly selling methamphetamine. They found petitioner asleep on a bed with then 11-month-old E. lying awake beside him. Petitioner was arrested for being under the influence of drugs, possession of drug paraphernalia and child endangerment. E. was taken into protective custody by the Kern County Department of Human Services (department) and placed in foster care. At the time, the whereabouts of E.'s mother, D., also a substance abuser, were unknown.

The juvenile court assumed dependency jurisdiction and, in October 2005, ordered reunification services for petitioner, then an inmate in county jail, and for D. who had been located. Petitioner's case plan required him to participate in substance abuse and parenting counseling. It also required the department to arrange monthly one-hour visitation. The court set a six-month review hearing for March 21, 2006.

On November 17, 2005, the caseworker met with petitioner at the county jail and reviewed the case plan with him. Petitioner stated he was sentenced to a four-year prison term. He waived visitation with the understanding that he could request it in the future. He also stated he would inquire about classes once he was transferred to prison. The next day, he was transported to Wasco State Prison (Wasco). While there, he completed 160 hours in what he believed to be a substance abuse program. On January 27, 2006, he was transferred to Corcoran State Prison (Corcoran). Once there, he wrote to the caseworker

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and requested visitation. On February 17, 2006, the caseworker spoke with petitioner's prison counselor who said he would assist petitioner with his case plan.

In its six-month status review, the department reported that petitioner and D. failed to visit E. or participate in their case plans. The department also reported that it placed E. with her maternal grandmother for two weeks but that the grandmother withdrew her application after the department discovered she had a male wanted on a felony arrest warrant living in her home. In addition, the caseworker mailed a placement application to a paternal relative but the application was returned undelivered and the department had no forwarding address. Under the circumstances, the department recommended the court terminate reunification services and pursue a permanent plan of adoption.

On March 21, 2006, the court convened the six-month review hearing. Petitioner appeared in custody and objected to the department's contentions that he did not participate in court-ordered treatment and that he waived visitation. The court set the matter for a contested hearing on April 13, 2006. Meanwhile, petitioner remained in county jail where he received his first visit with E. on April 3, 2006.

On April 13, 2006, the court convened the contested six-month review hearing. The caseworker testified that petitioner waived in-custody visitation on November 17, 2005, and counsel for petitioner did not challenge that evidence. Instead, he argued it was unreasonable for the caseworker to wait until April to arrange visitation when petitioner requested visitation in January. With respect to that, the caseworker testified that he contacted the hearing service aide at Corcoran to initiate E.'s clearance for visitation as soon as he received petitioner's request.

Counsel for petitioner also argued the court could not find petitioner failed to regularly participate in court-ordered services considering the many hours of substance abuse counseling he completed at Wasco. County counsel argued the services petitioner completed did not meet departmental requirements for substance abuse counseling but

could not explain why. Consequently, the court continued the hearing to April 20, 2006, so that the department could address that issue.

The contested hearing was continued several times and resumed on June 7, 2006. Petitioner testified he received three to four hours of substance abuse counseling five days a week at Wasco. He stated his cousin was willing to care for E. until his release from prison scheduled for September 11, 2007.

A social worker testified that the department requires eight months of substance abuse treatment, including two months of aftercare, with a state certified provider. Petitioner's participation at Wasco would not qualify because, according to the Wasco substance abuse program director, Wasco provides substance abuse screening and assessment, orientation and introduction to substance abuse treatment rather than treatment. Even if Wasco provided substance abuse treatment, petitioner would not have completed a substance abuse program as defined by the department because he did not complete the full eight months.

At the conclusion of the hearing, the court found petitioner was provided reasonable services but failed to regularly participate and make substantive progress in his case plan. The court ordered services terminated and set the matter for permanency planning. This petition ensued.

## **DISCUSSION**

Petitioner claims the department acted unreasonably in not facilitating visitation as ordered and in not exploring what services were available to him while incarcerated. Therefore, he argues the juvenile court erred in finding he was provided reasonable services. Petitioner also appears to claim, without citation to legal authority or to the appellate record, that the court erroneously denied him custody of E. despite his ability to make arrangements for her care during his imprisonment. We find no merit to either claim.

On a challenge to the juvenile court's reasonable services finding, we view the evidence in a light most favorable to the respondent, indulging in all legitimate and reasonable inferences to uphold the verdict. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*) Moreover, under our review, services need not be perfect to be reasonable. The "standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) In that petitioner bears the burden of demonstrating error on appeal (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632), he must show that the juvenile court's finding that the department made reasonable efforts to facilitate reunification services is not supported by substantial evidence.

We conclude substantial evidence supports the juvenile court's reasonable services finding. With respect to visitation, it is undisputed petitioner waived in-custody visitation in November 2005 with the understanding that he could request it in the future. He did not request visitation until the end of January 2006 upon his transfer to Corcoran. Therefore, it can not be said the department was unreasonable for not arranging visitation from November 2005 through January 2006. Moreover, according to the record, the caseworker acted upon petitioner's request for visitation by initiating the clearance procedures at Corcoran. While the record does not indicate when the caseworker initiated the clearance process or even when or if clearance was given, petitioner fails to establish that the caseworker unreasonably delayed in seeking clearance or arranging visitation once clearance was approved. Therefore, he fails to establish that the caseworker was unreasonable in failing to arrange visitation in February and March 2006. Based on the foregoing, we conclude petitioner fails to establish that the department's efforts to arrange visitation were unreasonable.

Further, the record does not support petitioner's claim the department made no contact with the penal institutions to determine what services were available to him. It is unrefuted that petitioner's caseworker spoke to petitioner's counselor at Corcoran in February 2006 and was assured the counselor would assist petitioner with services. Moreover, the record is replete with evidence that petitioner participated in services whether as a result of his own initiative or with the assistance of the department. Further, petitioner does not claim that there were required services available to him that he did not access because the department did not help him identify them. Therefore, this challenge to the reasonableness of the department's efforts must fail as well.

Finally, with respect to petitioner's claim he could adequately arrange for E.'s care, we conclude he waived the issue by failing to set forth his claim. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.) Further, there is no evidence to support it. His cousin's willingness to care for E. does not constitute an approved arrangement for her care. Moreover, whether petitioner could arrange for E.'s care was not a consideration at this stage of the proceedings. Rather, an incarcerated parent's ability to arrange for a child's care is an issue at the jurisdictional hearing when the juvenile court must decide whether the child is described by section 300, subdivision (g).<sup>2</sup> (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077-1078.) Finally, to the extent petitioner seeks to arrange relative placement for E., he must raise the issue before the juvenile court. However, on this record, we find no error.

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<sup>2</sup> Section 300 provides in pertinent part that "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] ... [¶] (g) ... [T]he child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child ...."

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.